**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929**

**OP.No. 13564 of 2000(M)**
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**PETITIONERS:**
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1. **DR. A.L. JACOB, AKKARA HOUSE,**
   **P.O. PAVARATTY, THRISSUR DISTRICT.**

2. **DR. ABDUL LATHEEF,**
   **PULIKKAL HOUSE,**
   **MUTHOOR, TIRUR,**
   **MALAPPURAM DISTRICT.**

3. **DR. G. SUGUNAN, AYSWARIA,**
   **MANNAMTHALA.P.O.,**
   **TRIVANDRUM.**

4. **DR. SHEEJA.S.,**
   **VALIYAVEEDU,**
   **PETTA.P.O., TRIVANDRUM.**

5. **DR. T.L. SUGATHA,**
   **PRIYAS, POOVACHAL.P.O.,**
   **TRIVANDRUM.**

6. **DR. M. SOBHANA,**
   **LAKSHMIPURAM,**
   **P.O. KAYARALAM,**
   **KANNUR DISTRICT.**

7. **DR. A. VIVEKANANDAN,**
   **ANNAMALA HOUSE, P.O. KOTTALI,**
   **KANNUR - 16.**

**BY ADV. SRI.K.JAJU BABU,**
**SRI.BRIJESH MOHAN.**

**O.P. NO. 13564/2000:**

**RESPONDENTS:**
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARATMENT, GOVT. SECRETARIAT, TRIVANDRUM.**

2. **DIRECTOR OF INDIAN SYSTEMS OF MEDICINE, TRIVANDRUM.**

3. **KERALA PUBLIC SERVICE COMMISSION, PATTOM, TRIVANDRUM, REPRESENTED BY ITS SECRETARY.**

***ADDL. RESPONDENTS 4, 5, & 6 IMPLEADED:**

***4. POST GRADUATE STUDENTS ASSOCIATION, GOVERNMENT AYURVEDA COLLEGE, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY, DR. SHARMAD KHAN .M, SHAJARA, STATION KADAVU, KAZHAKKUTTAM, THIRUVANANTHAPURAM - 695 582.**

***5. M. PRASAD, GOVERNMENT AYURVEDA COLLEGE HOSTEL, POOJAPPURA, THIRUVANANTHAPURAM - 12.**

***6. DR. SREEJITH. T.V., S/O. GOVINDAN, VADAKKUMPAD, KARIVELLUR, KANNUR DISTRICT.**

***ADDL.R4 & R5 ARE IMPLEADED AS PER ORDER DATED 20/07/2000 IN C.M.P. NO. 27521/2000 AND ADDL. R6 IS IMPLEADED AS PER ORDER DATED 20/07/2000 IN C.M.P. NO. 28597/2000.**

**BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC,**
**GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN,**
**ADV.SRI.PIRAPPANCODE V.S.SUDHIR,**
**ADV.SMT.RESMI G. NAIR,**
**ADV. SRI.K.MOHANA KANNAN.**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, ALONG WITH O.P NO. 19474/2000,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**O.P. NO. 13564/2000:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE JUDGMENT DTD. 20/08/99 IN O.P. NO. 21440/99 PASSED BY THIS HONOURABLE COURT.**

**EXT.P.2: COPY OF THE JUDGMENT DTD. 10/12/99 IN W.A. NO. 215/99 IN O.P. 21440/99 OF THIS HONOURABLE COURT.**

**EXT.P.3: COPY OF THE LETTER ISSUED BY THE R.2. TO THE R.3. VIDE NO. D3-3152/98.**

**EXT.P.4: COPY OF THE CIRCULAR DTD. 21/03/1997 ISSUED BY THE GOVERNMENT VIDE NO. 4441/AD - C-3/97/P&ARD.**

**RESPONDENT'S EXHIBITS:**

**EXT.R3.A: COPY OF THE LETTER NO. D3-16770/99 DTD. 29/02/2000.**

**EXT.R4.A: COPY OF THE JUDGEMENT DTD. 10/12/1999 IN W.A. NO. 2382/1999 OF THIS HONOURABLE COURT.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**prv.**

**THOTTATHIL B.RADHAKRISHNAN, J.**

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O.P.Nos.13564 & 19474 OF 2000

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Dated this the 25th day of May, 2007

**O R D E R**

These writ petitions are by persons included in the rank list prepared by the Kerala Public Service Commission, following notification dated 22.6.1993, for appointment to the post of Medical Officers in Ayurveda.

2. O.P.No.21440/99 was filed seeking a direction to report 100 vacancies which, allegedly, existed. That writ petition and certain connected matters were disposed of by judgment dated 20.8.1999. W.A.No.2215/99 was carried against that judgment, against the interest of the writ petitioners. That was disposed of by the Division Bench by judgment dated 10.12.1999 noticing that the judgment of the learned single Judge contain no compulsions on the Government, but it was left to the discretion of the Government to report the vacancies or not.

3. Thereafter, the Director of Indian Systems of Medicine

addressed the Secretary of the KPSC, on 23.8.1999, reporting vacancies of Medical Officers (Ayurveda) in the light of the rank list being available, however, requesting that advice memos need not be sent without further information from the office of the Director. Thereafter, the said rank list expired on 23.8.1999. On 29.2.2000, following the directions of the Government contained in letter No.39390/D1/99/H & FWD dated 25.2.2000, the Director of Indian Systems of Medicine issued yet another letter to the Secretary, KPSC, withdrawing the request dated 23.8.1999 for advising candidates.

4. In these writ petitions, the primary contention is that vacancies were available during the currency of the aforesaid rank list and Circular No.4441/Adv.C3/97/P & ARD dated 21.3.1997 issued by the Government enjoins that there should be prompt reporting of vacancies and maintenance of quarterly reports, as also that once vacancies are reported to the Commission, that should never be cancelled, nor reduced.

5. The directions issued by the Government in that circular are to be complied with by all heads of departments and appointing authorities. Those directions contain clear reflections of the constitutional mandates in Articles 14 and 16, including the requirement that during the currency of a rank list, the vacancies shall, invariably, be filled up from among the candidates in that list and still further that, there shall not be any provisional appointment in respect of posts where there is a valid ranked list prepared by the PSC. Vacancies which are likely to continue beyond three months are to be reported to the PSC. The heads of departments and appointing authorities are to ascertain and ensure the correct vacancy position. The circular enjoins a quarterly review of the vacancy position to enable the appropriate working of the instructions contained in that circular. Obviously therefore, when a rank list comes into force, there cannot be any appointment of a regular basis to any vacancy meant for direct recruitment, except from that list. In the scheme of the said circular, understood in the context of Articles 14 and 16, including the right of the open market

candidates for direct recruitment, such vacancies cannot be filled by resorting to any other mode for accommodating ineligible hands.

6. In view of what is aforesaid, while the Government may have a policy decision touching the Department of Indian Systems of Medicine, all available substantive vacancies, including those which have to be identified as available to be counted as having arisen during the currency of the particular rank list have to be identified to ensure that no open market candidate, who could not get appointment goes without that, in the context of the fact that the list was current till 23.8.1999.

7. In the aforesaid circumstances, the Director of Indian Systems of Medicine is hereby directed to file an affidavit, identifying all substantive vacancies as on 22.8.1999, including any posts occupied by temporary hands and by temporary promotions. The ratio between the direct recruits and promotees in terms of the Special Rules shall be maintained for

determining the vacancy position as stated above. Any regular promotion granted in excess of the quota shall also be identified. Having regard to the fact that these writ petitions were filed in the year 2000 and the Government have not filed an affidavit till now, the affidavit, as directed, shall be on record positively within a period of three weeks. It is clarified that the time limit fixed as above shall be treated as peremptory.

Post on 11.6.2007.

H/o copy to Government Pleader also.

**THOTTATHIL B.RADHAKRISHNAN**
**Judge**

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NOs.13564 & 19474 OF 2000

O R D E R

25th MAY, 2007.

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